S. HRG. 98-393

OLD AGE ASSISTANCE BILL

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 1151

TO COMPENSATE HEIRS OF DECEASED INDIANS FOR IMPROPER PAYMENTS FROM TRUST ESTATES TO STATES OR POLITICAL SUBDIVISIONS THEREOF AS REIMBURSEMENTS FOR OLD AGE ASSISTANCE RECEIVED BY DECEDENTS DURING THEIR LIFETIME

JULY 26, 1983
WASHINGTON, D.C.

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OLD AGE ASSISTANCE BILL

JULY 26, 1983

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 10:11 a.m., in room SD–608, Dirksen Senate Office Building, Senator Mark Andrews (chairman) presiding.

Present: Senator Andrews.

Staff present: Paul Alexander, staff director; Peter Taylor, general counsel; Virginia Boylan, staff attorney; John Chaves, staff attorney; Maria Mendoza, staff attorney; and Twinkle Thompson, staff attorney.

Senator ANDREWS. The hearing will come to order.

Good morning.

This hearing concerns S. 1151 which I introduced at the request of the administration. Its purpose is, by establishing an administrative procedure, to compensate heirs of deceased Indians for improper payments from trust estates to State or local governments. This practice, which was used to reimburse States for old age assistance payments they had made to needy Indians during their lifetimes, was held to be illegal in 1962. At least nine States, including my own State of North Dakota, received reimbursements prior to the court decision. While there appears to be substantial agreement as to the desirability of resolving these claims legislatively, there are a number of concerns over the specific bill, including the issue of interest, the appropriateness of a monetary cutoff on the claims, and requiring claimants to be the moving parties in the recommended procedure. We will explore these issues this morning.

At this point, without objection, I will place a copy of S. 1151 in the hearing record.

[The bill follows:]

II

98TH CONGRESS
1ST SESSION

S. 1151

To compensate heirs of deceased Indians for improper payments from trust estates to States or political subdivisions thereof as reimbursements for old age assistance received by decedents during their lifetime.

IN THE SENATE OF THE UNITED STATES

APRIL 27 (legislative day, APRIL 26), 1983

Mr. ANDREWS (by request) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To compensate heirs of deceased Indians for improper payments from trust estates to States or political subdivisions thereof as reimbursements for old age assistance received by decedents during their lifetime.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) The Secretary of the Interior is authorized to determine claims for compensation filed by the heirs or successors of heirs of deceased Indians for the improper reimbursement to any State or political subdivision thereof out of trust estates of those deceased Indians of old age assistance payments received by the decedents during their lifetime.

(b) Claimants shall submit their claims for compensation under this Act in writing to the Secretary of the Interior in accordance with and within two years after the date on which the regulations required by section 2 are published in the Federal Register: *Provided,* That no claim in an amount of less than fifty dollars shall be paid by the Secretary: *Provided further,* That no interest shall be paid upon any compensation ascertained pursuant to the provisions of this Act.

SEC. 2. (a) Within ninety days after enactment of this Act, the Secretary of the Interior shall promulgate and publish in the Federal Register final regulations and procedures for the processing of claims under this Act, along with a list of all deceased Indians whose trust estates were subject to reimbursement of old age assistance payments received by the decedents during their lifetime.

(b) Where the prospective claimants described in subsection 2(a) are ascertainable through a reasonable search of Department of the Interior records, notice of this Act and the rights conferred hereunder shall be provided.

(c) The Secretary shall also cause to be published in such newspapers of general circulation as the Secretary considers necessary, an explanation of the rights conferred by this Act as well as the procedures for filing claims hereunder.

SEC. 3. (a) The payment of any claim, after its determination in accordance with this Act, shall be a full discharge

to the United States or any State or political subdivision thereof of all claims and demands touching any of the matters involved in the controversy.

(b) A final determination by the Secretary made against a claimant shall forever bar any further claim or demand by such claimant against the United States or any State or political subdivision thereof arising out of the matter involved in the controversy.

(c) To carry out the provisions of this Act, there are authorized to be appropriated the sums of $750,000 for fiscal year 1983 and $750,000 for fiscal year 1984, such sums to remain available until expended: *Provided*, That not more than $200,000 of the total of such sums be available for administrative costs necessary to implement this Act.

○

Senator ANDREWS. We had originally scheduled a markup on several items at the end of the hearing this morning, but that markup will be postponed until Thursday.

As usual, our first witness today will be Mr. John Fritz, who is the Deputy Assistant Secretary of the Department of the Interior.

Welcome again, Mr. Secretary. We are glad to have you here.

STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS (OPERATIONS), DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY MICHAEL COX, ATTORNEY; AND GUY FRINGER, HISTORIAN

Mr. FRITZ. Thank you very much, Mr. Chairman.

Appearing with me this morning, to my immediate right, is Mr. Michael Cox, of the Department of the Interior's Office of the Solicitor. Mr. Cox is an attorney with the Division of Indian Affairs staff of that office. To my left is Mr. Guy Fringer, a historian with the Office of Trust Responsibility within the Bureau of Indian Affairs.

Mr. Chairman, I am pleased to present the views of the Department with respect to S. 1151, a bill "to compensate heirs of deceased Indians for improper payments from trust estates to States or political subdivisions thereof as reimbursements for old age assistance received by decedents during their lifetime."

Mr. Chairman, we recommend enactment of S. 1151, with a suggested technical amendment and with an offer on the part of the Department to work with the committee staff to rectify the date and publishing timeframes with respect to regulations and the running of the time to file claims. This is necessary in light of current OMB practices regarding clearances for publication of regulations.

The purpose of the bill is to permit the heirs or successors to the heirs of a certain class of Indians to file claims of $50 or more with the Secretary of the Interior based upon the Bureau of Indian Affairs' practice of allowing States to be reimbursed out of the trust estates of deceased Indians for the amount of old age assistance provided such Indians during their lifetime.

This practice commenced against the trust estate of deceased Indians immediately after the enactment of the act of June 25, 1910. In 1971, as a result of the 1962 decision of *Running Horse* v. *Udall*, the Department's Indian probate regulations were amended to disallow claims of State and local governments for social security or old age assistance payments.

During the course of our statute of limitations program, we learned that funds were improperly paid out of approximately 2,600 trust estates to reimburse a number of States. Although it is estimated currently that some of these claims could range up to $7,000, most are in the $200 to $300 range.

We note that S. 1151 is identical to a draft bill transmitted to the Congress by the Department last fall. Because of the timing of this legislation, we would currently recommend that the fiscal years referred to in section 3(c) be amended to 1984 and 1985, respectively, instead of 1983 and 1984.

This concludes my synopsis of my opening statement. I would be happy to respond to any questions that you might have, sir.

[The prepared statement follows:]

PREPARED STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS (OPERATIONS), DEPARTMENT OF THE INTERIOR

Mr. Chairman, I am pleased to present the views of the Department of the Interior on S. 1151, a bill "to compensate heirs of deceased Indians for improper payments from trust estates to states or political subdivisions thereof as reimbursements for old age assistance received by decedents during their lifetime."

Mr. Chairman, we recommend enactment of S. 1151, with the suggested technical amendment.

The purpose of the bill is to permit the heirs or successors to the heirs of a certain class of Indians to file claims of $50.00 or more with the Secretary of the Interior based upon the Bureau of Indian Affairs' practice of allowing States to be reimbursed out of the trust estates of deceased Indians for the amount of old age assistance provided such Indians during their lifetime.

The practice of allowing creditors' claims against the trust estates of deceased Indians began immediately after the enactment of the act of June 25, 1910 (36 stat. 855), which gave the secretary exclusive jurisdiction over the administration of the trust portion of the estates of individual Indians. This practice was sanctioned by a 1951 solicitor's opinion, which found an implied authority in the secretary to approve creditors' claims based upon reasoning that accepted state probate proceedings as a necessary part of the distribution of Indian estates. However, in 1962, the United States District Court for the District of Columbia, in the case of *Running Horse* v. *Udall*, 211 F. Supp. 586 (D.D.C. 1962), held that the secretary was not authorized to direct a repayment of an old age assistance claim submitted by the State of South Dakota against the trust estate of a deceased Indian where such payment would come from monies accruing from trust land, since such a claim would constitute an encumbrance against trust land, in contravention of 25 U.S.C. 349.

In 1971, the department's Indian probate regulations were amended to disallow claims of a State or local government for social security or old age assistance payments.

During the course of our statute of limitations program, we learned that funds were improperly paid out of approximately 2,600 trust estates to reimburse the following states or counties therein: Minnesota, Nebraska, North Dakota, South Dakota, Idaho, Montana, Oregon, Wisconsin, and Washington. Although it is estimated that some of the claims would range up to $7,000, most are in the $200–$300 range.

We note that S. 1151 is identical to a draft bill transmitted to the Congress by the department in the fall of 1982. Because of the timing of this legislation we would recommend that the fiscal years referred to in section 3(c) be amended to 1984 and 1985, respectively, instead of 1983 and 1984.

Mr. Chairman, this concludes my prepared testimony. I would be happy to answer any questions you or the members of the committee may have.

Senator ANDREWS. Thank you, Mr. Secretary.

You state that the practice of allowing creditors' claims against the trust estates of deceased Indians began in 1910. The bill before us relates to payments to States as reimbursement for old age assistance rendered to impoverished Indians. During what period of time were payments made?

Mr. FRITZ. Throughout that entire——

Senator ANDREWS. They were made back then?

Mr. FRITZ. I am sorry. I thought it was throughout. Essentially, what we are talking about is a period from 1948 through 1960.

Senator ANDREWS. That is right. The practice began in 1910, but those were very, very few. The wholesale practice began in that period of time.

Mr. FRITZ. Primarily during that 12-year timeframe.

Senator ANDREWS. In hearings before the House and Senate on statute of limitations claims we heard two different figures on the total amount paid out on these claims. One figure was $1.5 million, and the other was $2.5 million. Can you tell us with any certainty the figure on these old age assistance claims?

Mr. FRITZ. At this juncture it is in excess of $1.5 million, but I have reason to believe that it is under $1.8 million. This is after sorting out the facts and figures surrounding the statute of limitations pursuant to the congressional mandate the Department operated under into this spring. I think the correct figure is somewhere around $1.75 million.

Senator ANDREWS. If you have a figure that is a little closer, you can supply that for the record.

Mr. FRITZ. Yes, sir.

[Subsequent to the hearing, information was supplied by the Department of the Interior verifying that the $1.75 million figure is correct.]

Senator ANDREWS. On March 31 of this year, the Department of the Interior published in the Federal Register a list of 2,415 claims that had thus far been identified. What is the total number of old age assistance claims that was published?

Mr. FRITZ. The number of trust estates affected was about 2,600, to my understanding.

Senator ANDREWS. Are the names published of those who are entitled to file a claim for reimbursement or those of the deceased Indians from whose estate improper payments were made?

Mr. FRITZ. Mr. Chairman, those names published were the names of the deceased Indians. It does not relate to the claimants.

Senator ANDREWS. Therefore, the claim might have been against real estate or it could have been against some personal asset?

Mr. FRITZ. In this instance, I think what we are talking about is just trust assets.

Senator ANDREWS. In each instance, then, of the 2,415 they were proceedings against real estate or trust land, realty?

Mr. COX. I believe in some that was the case. Trust real property was involved. In others, if there were other types of trust assets, those assets would be used to reimburse the States or counties.

Senator ANDREWS. If the name published is that of the decedent, then does it not stand to reason that the number of potential claimants is far greater than the number of names published?

Mr. FRITZ. Yes.

Senator ANDREWS. S. 1151, the bill that was forwarded to the Congress by the administration, specifically states that interest shall not be paid on these claims. I am not going to ask you about the merits of this position, but I would ask you what interest the Indians Claims Commission or the U.S. Court of Claims awards on judgments for Indians or Indian tribes in those cases where it determines that the plaintiff is entitled to interest.

Mr. FRITZ. As we were just discussing, my own personal experience is limited with respect to those organizations, but it is my understanding that it is 5 percent. I think that is right.

Senator ANDREWS. That is OK. We can get it later on from Mr. Sonosky, I am sure.

S. 1151, as introduced, would authorize two separate appropriations of $750,000 in 2 fiscal years, for a total of $1.5 million. It also specifies that not more than $200,000 of this sum shall be available for administrative costs necessary to implement this act. This would appear to leave the total amount authorized some $200,000 short of the least amount the administration admits was erroneously paid out and some $400,000-plus short of the amount you just testified to as being the more accurate figure. How do you explain this proposal?

Mr. FRITZ. Essentially, there is a $50 limit that applies to each estate, which would knock out some of the smaller claims against estates, not against claimants but rather against the estates. Therefore, we are looking at, as I understand it, about 10 percent of the total which is in excess of $1,000 and there are probably that many claims which are less than $50 against the estates. Actually, that number is probably higher than 10 percent.

Senator ANDREWS. You do not intend, then, to pay anything less than $50?

Mr. FRITZ. That is the proposal that is in the legislation.

Senator ANDREWS. I am interested in the administrative process involved in the implementation of the act. Under the provisions of section 2(b), the Department is obligated to conduct a reasonable search of the Interior records to ascertain prospective claimants. How do you propose to conduct this record search? Will you do it with existing personnel or will it be conducted by the BIA or by the administrative law judges?

Mr. FRITZ. I think the procedures used to identify claimants would be utilizing genealogical research and a search of the probate files. What we are proposing to do is to utilize our own personnel in most cases. Temporary personnel may be needed in the Aberdeen office, however.

Senator ANDREWS. Do you have an estimate of how long it will take to conduct this search and issue notices to potential claimants?

Mr. FRITZ. I was just informed 12 to 18 months. I thought it was a little bit longer than that, but we are looking at 12 to 18 months.

Senator ANDREWS. We will take that answer. I would just as soon not have it any longer.

Mr. FRITZ. Yes, sir.

Senator ANDREWS. Since the record search will not only reveal the names of the prospective claimants but also the amount to which these prospective claimants would be entitled, why should we not simply authorize payment of the claim, rather than requiring them to file a claim and setting a $50 cutoff? Which way would be the most efficient?

Mr. FRITZ. From the standpoint of how the claim is to be made, I think that the claims have to be filed rather than just arbitrarily giving the money out to the people that we are examining here. We have to get to the substance of whether they have true and valid claims. Our records indicate it, and we presume that our records are complete for the most part.

Senator ANDREWS. If you go through this list and you establish a list of 500 or 1,000 names, or whatever, and you determine that Joe Silver Cloud's estate is entitled to $137.50, would it not be more cost

efficient to—since you have determined that this is what he is entitled to—send a check to that estate rather than to have to go out and get that estate to file a claim, which you then have to process?

Mr. FRITZ. We are going to end up having to probate that aspect of the estate. The moneys that are going in there are part of the estate which has previously been probated. This money will have to go into the estate and be probated, much akin to the assets which were previously probated. It will have to be handled in that fashion. I do not think that we could arbitrarily assign to whom it is going to go without its going through probate because it is a trust asset.

Senator ANDREWS. It would go through the estate.

Mr. FRITZ. It would go through the estate, and then——

Senator ANDREWS. All I am saying is that if you have established that there is a plan for x dollars to so and so's estate, could you not just make out the check to so and so's estate, and the estate would then have it and have to go from there?

The records that you are searching have the names of the heirs who were there originally. All I am trying to eliminate is——

Mr. FRITZ. Yes, you are trying to expedite it.

Senator ANDREWS. So you hire some people in the BIA to go out and find who is entitled. Then you find this person who is entitled to x number of dollars. Do they then have to come back and reestablish, and you hire somebody at BIA to look at the total of the new claim?

Mr. FRITZ. I understand what your question is.

Senator ANDREWS. How many times do you have to reinvent the wheel on that?

Mr. FRITZ. It seems like often. Let us look at that, Mr. Chairman, because I think that there is some way that we could work this around so that we could expedite the process and make it more efficient and more effective, and so that we ultimately do not burden the claimants to a large extent.

Senator ANDREWS. I am concerned largely with the burden on the claimant. The heirs of these deceased Indians do not have ready access to an attorney, do not really feel comfortable making out the types of papers and all of the rest. Inasmuch as you are already going to establish who is entitled to it, you have searched the records and all of this, why do you not do it all at once and help the Indians, and, second, save your own Agency some extra hours in having to process the claim the second time around when it comes in? I would bet you could find a way of doing that. We would be interested in seeing what you come up with.

Finally, if you do not send the check out, how is a claimant to know that they are entitled to $50 or more unless the Department of the Interior tells them? If the Department of the Interior already knows, why do you require filing of a claim? If you go the other way, what do you expect the claimant to show before the claim is paid?

Do you see all the extra paperwork and monkey business you are going to create?

Mr. FRITZ. Essentially, the process is necessary to verify where the people are located presently, to verify who is alive, where they are living, that sort of thing—just the administrative detail. However, I agree with you. I do not know whether we need to have a claim filed

or just send out information requests for where the individual currently lives, that sort of thing.

I think we should look at this and determine if there is a simpler way to do it.

Senator ANDREWS. Therefore, one of these claims ends up being split three ways, and each claimant gets $47.50, or some such thing. You send out the mail in one of those traditional khaki-colored envelopes with a note on it to the postmaster, "Return if addressee is deceased." You could clear up an awfully lot of problems in a whale of a hurry, I would guess. That is how a lot of Government checks go out.

Mr. FRITZ. I think we can look at the problem.

Senator ANDREWS. We will be interested in seeing what you do decide.

Thank you, Mr. Secretary.

Mr. FRITZ. Thank you.

Senator ANDREWS. We now have a panel of witnesses who will testify on this: Barbara Lindley and Carl McKay of the Three Affiliated Tribes of Fort Berthold.

Also on this panel are Lenny Ross, who is the director of the claims program for the Leech Lake Band of Chippewas; Yvette Hall War Bonnet, the litigation director of the Dakota Plains Legal Services; Norman Hollow, who is the chairman of the Assiniboine and Sioux Tribes of Fort Peck; and Paul Iron Cloud from Pine Ridge.

Let me assure you all that your statements, as prepared, will be considered as given in total. If you wish to summarize them in whatever way, that is fine.

Who wants to go first? Barbara, please, proceed.

STATEMENT OF BARBARA LINDLEY, THREE AFFILIATED TRIBES OF THE FORT BERTHOLD INDIAN RESERVATION, N. DAK., ACCOMPANIED BY JAMES FITZSIMMONS, NORTH DAKOTA LEGAL SERVICES

Ms. LINDLEY. Mr. Chairman, I am proud to appear before this committee today to discuss an issue which we feel is very important to the Indian people.

My name is Barbara Lindley. I am an enrolled member of the Three Affiliated Tribes of the Fort Berthold Indian Reservation in North Dakota. The gentleman seated to my right is Jim Fitzsimmons, who works with North Dakota Legal Services from New Town. He has assisted the tribes greatly in our endeavor to resolve these particular claims.

I would like to apologize for Carl McKay, who could not be here today, and Ms. Tilley Walker, vice chairwoman of the Three Affiliated Tribes, who wished to appear today to address this particular bill.

I would like to state that investigations on Fort Berthold have resulted in the identification of approximately 30 old age assistance claims which total $27,000 and probably involve in excess of 400 living heirs. The State of North Dakota has within its boundaries three other Indian reservations. All told, old age assistance claims within North

Dakota alone total approximately $210,000 and affect literally thousands of heirs.

The Aberdeen area office has put together some rough figures for us. According to their estimates, we have in the Aberdeen area office alone, which is 1, I understand, of 12 area offices, $1.2 million in identified claims.

Some of the things that I would like to address regarding this legislation includes the language that, as you discussed previously, claims must be filed by the heirs or the individual claimants. We feel that this is awfully difficult for the living heirs to do, inasmuch as there are times when the claimants are removed by one to two generations from the original decedent.

Senator ANDREWS. Barbara, you listened to the discussion that I had with the Secretary. Do you think that the system I outlined, where once they determine the amount payable and entitled to, and they also at that time determine the estate and the heirs, would it not be feasible to just issue the checks directly to the determined heirs rather than go through all of the process of their then having to file and do it all over again?

Ms. LINDLEY. Very definitely. I think that would take care of a lot of duplication and cut down on the time on due process. It would end up allowing those moneys to be paid much more expeditiously.

On the Fort Berthold Reservation, in the Fort Berthold agency, the probate files are filed there locally. All of the deceased Indian probate files are on record there. The lists of the heirs to that particular estate are also listed. It would only be a matter of a very short time to determine the living heirs of that particular estate.

Senator ANDREWS. How long in your mind, as claims coordinator for the tribe, do you think it should take for the BIA to examine these files and make the necessary determinations?

Ms. LINDLEY. The identified claims are fairly well substantiated by the researchers themselves. On Fort Berthold they refer directly to the probate files, and copies of the interest are included on those files.

I would say that it probably should not take in excess of 3 to 4 months at the outside to determine the actual living heirs at this time.

Now in that I am just speaking on behalf of Fort Berthold. I cannot speak on a national level.

Senator ANDREWS. You referred to "determined claims."

Ms. LINDLEY. The identified claims?

Senator ANDREWS. "Identified claims" was the terminology. What about the unidentified claims?

At Fort Berthold, by your testimony—and this is the way we learn, by asking questions of those of you out in the field—you talk about identified claims. Is this all of the claims or do we have some unidentified claims waiting in the wings ready to come in that have to be taken into account?

Ms. LINDLEY. In our particular situation, we investigated the claims from the perspective that we went into each individual probate file, all of the deceased Indian probate files. Any situation where there was an indication that a payment had been made to the State was something, then, that we followed up on and documented and submitted.

In the case of Fort Berthold, we have at this time listed in the Federal Register 29 identified claims. In reconciling that list with the folders and the files that we have on each case, we found that two of the claims that we had identified were not listed. Therefore, according to the Federal Government, they are not officially identified.

However, for Fort Berthold, I would say it is possible that all of the claims have been identified at this point.

Senator ANDREWS. What you will then do is certify to the Federal Government, and this will then become an identified claim, if people who come out agree with you that it is a bona fide claim?

Ms. LINDLEY. Right.

Senator ANDREWS. Do you suspect—and we will ask this question of the other tribes here—that other tribes have done similarly?

Ms. LINDLEY. I believe that the process, at least in the plains area, was very similar.

Senator ANDREWS. Thank you. You have been most helpful.

Do you have anything else to add?

Ms. LINDLEY. Yes; there were some other points that I wanted to address that you have spoken about just briefly.

That is the notification process. You are actually dealing with two categories, two subcategories, of claims. You are dealing with the claims that are already identified and have been published. You are dealing with those claims that were not included in that list and, as such, must still be officially identified and recognized. We suggest that language be included which recognizes the existing list, because we do not feel that it is necessary to duplicate that process once again for the special interest of this particular legislation. If deemed necessary, it can be republished. However, as I said, it would be a matter of duplication.

We request that a second list be published 90 days before the expiration of this legislation, simply to enable the claimants and the researchers, on behalf of the claimants, to ascertain that their particular claims are officially recognized. If necessary, a final list can be published which will give the researchers and the claimants themselves the benefit of knowing that their claims have been identified and are being considered for payment.

We want to also approach the statement that no claim in an amount of less than $50 shall be paid by the Secretary. Insofar as I have explained earlier, we feel that most of the documentation has already been done. We do not feel that cost-effective claims have to be in excess of $50.

We think that, inasmuch as there is no real economic burden associated with the majority of these claims, it is simply unreasonable, unfair, and inequitable to the claimants who would be involved.

Section 1(b) states that no interest shall be paid. Mr. Chairman, as your are aware and I am well aware, and I think all of the people here today are aware, a 1940 dollar does not equal a 1983 dollar.

Senator ANDREWS. Somehow or another, that has been brought to my attention. In this very room sits the Budget Committee, of which I am a member, and we have that driven home to us day after day.

Ms. LINDLEY. Section 3(b) refers to "final determination by the Secretary * * *." There is no language which requires the Secretary

to outline the process and criteria for such determination and make such information available to their claimants or their representatives.

The appropriation, section 3(c) identifies monetary amounts which we feel would be inadequate, simply because, as I stated previously, on the Aberdeen area office level alone we have identified approximately $1.2 million. This does not include an interest calculation.

Last, we believe that insofar as this particular piece of legislation will provide adequate remedy for the majority of the claims, we must also recognize that some potential claimants may wish to have their claims resolved by the courts. We believe that this option should remain open to them.

Senator ANDREWS. Thank you very much for an excellent statement and for your most helpful answers to the questions.

Jim, do you have anything to add?

Mr. FITZSIMMONS. The only thing, Senator Andrews, is that $1.2-million figure which Barb referred to comes directly from the Aberdeen area office, a gentleman named Simon Stevens, who is a BIA employee who has coordinated for our nine-State area. That figure is available to the U.S. Department of the Interior.

Senator ANDREWS. Those figures, of course, I am sure that the Secretary and his friends over here are taking due note of them, which is the reason for the hearing. We appreciate your calling it to our attention, Jim.

Mr. FITZSIMMONS. Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF MS. BARBARA LINDLEY, THREE AFFILIATED TRIBES' 2415 CLAIMS COORDINATOR, FORT BERTHOLD INDIAN RESERVATION

Chairman Andrews, members of this committee, it is my pleasure to appear before you to testify in support of S. 1151. My name is Barb Lindley. I am an enrolled member of the Three Affiliated Tribes of the Fort Berthold Indian Reservation in North Dakota and I am currently serving as the 2415 Indian Land Claims Coordinator. The Three Affiliated Tribes strongly supports this legislation which we believe is very good in concept and intention. We will be proposing certain amendments, however, that we feel will further strengthen the Act. We believe that this proposed legislation, with the amendments, will go a long way to resolve the specific category of Old Age Assistance Claims.

Investigations on Fort Berthold have resulted in the identification of approximately 30 Old Age Assistance claims totalling roughly $27,000 involving in excess of 400 heirs. The State of North Dakota has within its boundaries 3 other Indian Reservations. All told, Old Age Assistance Claims within North Dakota alone total approximately $210,000 and affects literally thousands of heirs. Virtually no one will dispute that such payments were wrongful under the governing law. However, Mr. Chairman, as you know, the Indian heirs of the decedents involved in these claims face a difficult chore in obtaining a legal remedy for these admitted wrongs. Presently many barriers exist to the effective legal resolution of these claims and it is clear to the Three Tribes that the proposed legislation may provide an effective vehicle for a more complete, comprehensive and fair resolution of the majority of these claims.

The revisions and amendments we wish to suggest for incorporation into this Act are as follows:

Section 1(a) includes the language "claims . . . filed by the heirs or successors of heirs of deceased Indians . . ." and Section 1(b) states "Claimants shall submit their claims. . . ." This language defers the total responsibility for identification upon the living heirs. It is our contention that identification should be the prime responsibility of the Department of the Interior, Bureau of Indian Affairs which has been delegated to uphold the federal trust responsibility in such matters. Therefore we suggest that the language be revised to reflect this.

In a more specific sense, we are dealing with two sub-categories of Old Age Assistance Claims: 1) the claims already identified and published in the Federal Register on March 31, 1983, and 2) those claims that were not included in that list and as such must still be officially identified and recognized. We suggest that language be included which recognizes the existing list. If so deemed necessary, that same list can be republished pursuant to Sec. 2(a), (b) and (c). We request that a second list be published 90 days before the expiration of this Act to enable claimants and researchers acting in behalf of claimants to insure that all claims are indeed properly identified and included for further consideration under the provisions of this Act. The claimants or their representatives can then respond to that list by submitting within that 90 day period, those names not in evidence in the second publication. We request that a final list be published within 60 days after expiration of this Act which will serve as the final notification to the claimants that their claims are being processed.

Section 1(b) also provides "That no claim in an amount of less than fifty dollars shall be paid by the Secretary. . . ." This provision likely stemmed from a concern that investigating and processing claims less than that amount would not prove cost effective. We believe that this assumption is mistaken. The investigation process required comprehensive documentation and so there should be no real additional economic burden associated with processing the vast majority of these claims. Therefore such an arbitrary limit, unrelated to what the administrative or other costs actually are, is simply unreasonable. We propose that no dollar limit on these claims be imposed at all.

Section 1(b) further provides "That no interest shall be paid upon any compensation ascertained pursuant to this proposed Act." Based on our reading of that language, this means that claimants would receive by way of settlement only the actual amounts paid wrongfully to the States from trust estates. Mr. Chairman, I bring to your attention the fact that the majority of the claims identified on Fort Berthold date back to the 1940's, some from the 1930's. As you are aware, Mr. Chairman, I state very simply that a 1940 dollar does not equal a 1983 dollar. Without any provision for an interest factor on these awards, the recipients will remain the sad victims of the decades of oversight. We suggest that the appropriate interest factor be assessed and applied to any claim settlement, from the date of wrongful payment to the date of ultimate disbursement of the award to the affected claimant. We believe that this is necessary to render such repayment meaningful and equitable.

Section 3(b) refers to "final determination by the Secretary . . .". There is no language which requires the Secretary to outline the process and criteria for such determination and make such information available to the claimants or their representatives, nor is there a provision for an appeal process beyond such determination. We believe that this should be provided for, once again to enable just and equitable attention to all claims.

Section 3(c) expressly identifies monetary amounts for a two year period which includes administrative costs and actual payment of valid claims. In the Aberdeen Area, claims totalling 1.2 million dollars have already been identified. This does not include any interest calculations nor does it include potential claims that have not yet been identified. The Aberdeen Area is only one of twelve. Thus it appears that the suggested appropriations proposed by this Act may be severely inadequate to meet actual needs. Therefore we suggest that Section 3(c) be amended to impose an obligation on the Secretary of the Interior to seek appropriations as necessary beyond the sums indicated to both discharge his responsibility under this legislation and to pay all claims deemed valid and due compensation.

Lastly, we believe that insofar as this particular piece of legislation will provide adequate remedy for the vast majority of Old Age Assistance Claims, we must also recognize that some potential claimants may choose to have their claims resolved by the courts. We believe that this option should remain open to them.

Mr. Chairman and members of the Committee, I thank you once again for the opportunity to appear before you to testify on this proposed legislation and at this time I would be happy to respond to any questions that you may have.

Senator ANDREWS. Next we would like to hear from Lenny Ross, who is the director of the claims program, Leech Lake Band of Chippewa Indians at Cass Lake, Minn.

STATEMENT OF LENNY ROSS, DIRECTOR OF CLAIMS PROGRAM, LEECH LAKE BAND OF CHIPPEWA INDIANS AND MINNESOTA CHIPPEWA TRIBE, CASS LAKE, MINN.

Mr. Ross. Thank you, Mr. Chairman.

Senator ANDREWS. Let me assure you, Lenny, that your statement, which we have, will be considered as given in total, and you may summarize in any way you wish.

Mr. Ross. Yes, I will summarize very quickly here.

Today, I am representing the Minnesota Chippewa Tribe and the Leech Lake Reservation Business Committee of Minnesota.

We agree with the intent of S. 1151 as it shows concern for the serious problem of 2415 claims. This is the first attempt to handle legislation concerning 2415 claims.

As former project director of the Minnesota Chippewa Tribe Claims Research Project, we uncovered approximately 3,900 2415 claims. The majority of these were title claims which affected some 100,000 acres in northern Minnesota. This has severely damaged the economy of northern Minnesota.

One of the claims that we ran across in the process was the old age assistance claims. These are very hard to research, and we had to obtain most of our documentation of these claims from the National Archives and the archives in Kansas City. The Bureau of Indian Affairs records in Minnesota were so scanty as far as paying old age assistance claims that we had to do a lot of travel to document these claims, and the burden of proof was placed upon our research team. We had to prove that these were actually paid rather than to just show that these claims were assessed against the estates.

One of the biggest problems I had with the bill is the provision that the Secretary of Interior's decision will be final and they will not allow claimants to pursue further damages. In many cases in Minnesota we have found where the land was sold to pay the welfare departments back. We feel that this was a violation of the claimants' rights as far as selling the land for any legal assessment of an old age assistance lien.

Another problem we have is not paying interest on the amount that was paid. This will set a serious precedent for future claim settlements on 2415 especially.

Another one is the idea of claimants having to file their claims. We agree that the BIA should conduct probates and send the respective heirs their shares in the estates. We have 69 old age assistance claims in Minnesota, totaling some $43,000. At the time that the moneys were paid to the welfare department there were 276 heirs. This number should have at least doubled by today. The amount of $50 or less will disallow a large majority of these claims in Minnesota.

Thank you for the opportunity of testifying.

Senator ANDREWS. Do you feel that this bill should be amended to provide, say, a $25 cutoff, or do you suppose that they should pay all that they ascertain as "oweable"?

Mr. Ross. Yes, I feel they should pay all the claims that would be feasible as far as the administrative costs to the Bureau of Indian Affairs.

Senator ANDREWS. When you looked through the records in your area, did you find that the States, in making these claims against the estates which were later affixed to realty, that some of these claims were in the neighborhood of $1.75 or $4.50?

Mr. Ross. Normally, the payments were around $60. That was usually the minimum.

Senator ANDREWS. Therefore, we are not talking about many claims? Even though the dollar has changed a lot in value since 1940, even in 1940 it is difficult for me to feel that they would have proceeded against real estate for a claim in the neighborhood of $5 or $10.

Mr. Ross. Yes. It was usually several thousand dollars that the land was sold for. An example was the land was worth $5,000, and they had a $4,000 lien against the estate. They sold the land for $5,000, paid $4,000 to the welfare department; $1,000, then, was divided among five or six heirs.

Senator ANDREWS. However, they would not take an Indian's land and sell it to take care of a $5 or $10 claim?

Mr. Ross. No.

Senator ANDREWS. The claims we are talking about are almost invariably above $50?

Mr. Ross. Yes.

Senators ANDREWS. Certainly, if we got down to $25, we would get most of the claims we are talking about?

Mr. Ross. Yes. The problem was that they would be split among so many heirs today, and it was a small dollar amount to begin with, of course.

Senator ANDREWS. The thing that is difficult for us, and we have been trying to add it up, is what a welfare payment would have been in 1940. You probably know, but it had to be in the neighborhood of $10 to $15 to $20 a month, probably. They would have had to be on it for several months, or you would almost think they would have been on it for several months. The payments that generated these kinds of claims did approach an excess of $50 as a matter of course, did they not?

Mr. Ross. Yes; usually, in the fifties it became something like $50, and then in the early sixties it was $60 a month.

Senator ANDREWS. One payment would get above. However, now when we are talking about the size of the claim, if they made a $500 claim against an estate and that estate has 20 heirs, that is $25 per heir. Is that the kind of claim we are talking about disallowing?

Mr. Ross. Yes.

Senator ANDREWS. Or would we look to the gross claim against the estate as the claim that would be payable? It was my feeling that it was the gross claim against the estate. Therefore, even though you had 15 to 20 heirs, which would mean that you would split it up into checks of less than $50, the $50 that is in the bill is the gross estate payment. Maybe we are talking about two different things.

Mr. Ross. Yes. I understood it to be the claimant's individual heirs today.

Senator ANDREWS. No: it is my interpretation, and looking at the Department's people nodding over here—you can sometimes tell more from a nod than on the record—they agree with me that what we are

addressing in this bill and in this conversation, and we are now making the legislative history, is that it is the intent of this bill that it apply to estates where the claim against the estate was $50 or more, even though in a $50 claim there might be 10 heirs now, which would mean $5 apiece. That would not disallow those payments of $5 apiece, as long as the gross proceeding against the estate was $50.

I doubt that you have found any estates that did not have a proceeding against them of at least $50. Is that not true?

Mr. Ross. Yes, very few.

Senator ANDREWS. The Secretary's statement was pretty ambiguous. That is why we are clarifying it. Clarifying it right now, we are going to make it, in fact, say an estate against which a claim of $50 or more was made would be one that would qualify. That takes care of it, I think, and takes care of some of the problems that you had, too, Barbara, when you mentioned the figure that should be below $50. That would, would it not, refer to the problem that you had in North Dakota?

Ms. LINDLEY. Definitely.

Senator ANDREWS. Well, you see, we are making progress.

Thank you very much.

[The prepared statement follows:]

PREPARED STATEMENT OF THE LEECH LAKE RESERVATION BUSINESS COMMITTEE AND THE MINNESOTA CHIPPEWA TRIBE, CASS LAKE, MINN., SUBMITTED BY LENNY ROSS, DIRECTOR OF CLAIMS PROGRAM

The Minnesota Chippewa Tribe is comprised of six affiliated reservations, of which the Leech Lake Band is a member. During the late 1970's and early 1980's, the Minnesota Chippewa Tribe conducted an extensive research project and identified approximately 3,900 potential claims.

The bulk of these claims are open-title claims, and thus do not come within the scope of the 28 U.S.C. 2415 statute. The title claims concern trust lands improperly conveyed into fee status by the Bureau of Indian Affairs and, as on the White Earth Reservation, by misguided individuals. Of particular importance on the Leech Lake Reservation are 470 claims involving 26,825 acres based on improper Secretarial Transfers of trust lands—where not all of the Indian owners provided consent to the sales. Secretarial Transfer claims involve approximately 34,880 acres on five of the member reservations.

The majority of the claims identified by the Minnesota Chippewa Tribe involve lands within the boundaries of the six member reservations, with a substantial number involving Indian trust lands outside reservation boundaries on the public domain. These latter claims have been rejected due to a lack of additional research. The Bureau of Indian Affairs has not provided further research on these important claims which involve thousands of acres, though the Department of Interior-Office of Solicitor has determined that no action will be taken until claim substantiation has been made.

Between one-third and one-half of the total number of claims have been rejected by the Department of Interior as in many cases the United States would be a defendant in any litigation. We are anxiously anticipating that the title claims will be scheduled within the year for legislative or litigative resolution.

In Minnesota, there are sixty-nine documented claims based on improper reimbursement for the State and/or Counties of individual Indian trust funds for Old Age Assistance Liens. Covering four of the member reservations, the claims amount to over $43,043.

There are several Old Age Assistance Lien based claims in which the actual dollar amount paid the State is unknown. This is due to unavailability of the Minnesota Agency account records. Determination and documentation will be necessary with claims in these circumstances prior to payment/resolution to the heirs of the decedents.

Considering the Department of Interior's policy during the period which the Old Age Assistance Liens were paid, we expect other claims of this nature to surface. Such claims would involve unallotted enrolled members for which the Individual Indian Money (I.I.M.) account records have not been located, and where the individual may have the necessary documentation in respect to possessing a valid claim.

The Minnesota claims may not appear to be great in terms of dollar amounts in comparison to the claim number and values in other States, however, we are anxious to decrease the number of active claims within our jursidiction.

The concern of Senator Andrews toward resolving these Old Age Assistance Lien claims is shared by us, and we commend his efforts in introducing S. 1151. We hope that this bill will serve toward tackling the more controversial title claims in Minnesota.

We are greatly encouraged by the steps made by the Senate Select Committee in bringing some of these serious concerns before Congress and are looking toward continued support and assistance in resolving our localized title disputes.

For your review we have attached our specific recommendations regarding S. 1151. Your positive consideration is appreciated.

Recommendations regarding S. 1151, the Old Age Assistance Lien Claim Resolution bill, submitted jointly by the Leech Lake Reservation Business Committee and the Minnesota Chippewa Tribe. We urge the Committee's support for the following recommended changes in S. 1151:

Section 1. (*b*).—Delete in its entirety, rationale follows.

Claimants, or the heirs of the decedents, should not be required to file claims in order to receive monetary settlement under this bill. The individuals at issue are innocent third parties to the improper disbursement of trust fund monies and should not be subject to bureaucratic redtape to get what rightfully belongs to them. The Department of Interior-Bureau of Indian Affairs is the sole guilty party to the actions involving these claims and must be compelled to take an advocate's role toward its trustee relationship toward Indian individuals and to the resolution of these Old Age Assistance claims.

Our recommendation is that, as innocent parties to these claims, the heirs of the decedents, be directly sent their respective entitlements through the postal service. To implement this condition, we urge that the Bureau of Indian Affairs conduct probates and/or formally instituted orders determining the heirs of the decedents, and thus maintain the trustee relationship.

We strongly object to the lack of an interest provision for the amounts due the heirs of the decedents. Had the trust fund accounts remained untouched with regard to reimbursement by the Department to the States and/or Counties, the accounts may conceivably have been accumulating interest.

Previous monetary legislative settlements, such as for various Indian land claims, have not included this type of blatant disallowance of justice. Furthermore, the bill, S. 1151, as worded sets a dangerously inviting precedent—an inviting precedent to the United States; wrongfully justified by the enormity of the national debt, that creates a long term damaging effect with regard to Indian claim settlements.

Our recommendation is that a proviso be added which provides for a formula based on current interest rates, to be tacked on to the principal, which would accrue retroactively from date of initial payment. In other words, the principal would be treated as if it had been in the treasury accumulating interest.

We also disagree with the stipulation that no claim less than $50.00 will be paid the respective heirs of the decedents. Notwithstanding the basic unjust nature of these existing terms where the heirs would, in essence, be penalized for the improper actions of the "Trustee"—the Bureau of Indian Affairs.

Should a "cover up" be made toward the so-called resolution of these valid claims, legal questions may later arise. A claim may remain unresolved, and a valid claim exist, should only a portion of the amount due the decedent's heirs be paid them. Recourse may be obtained through the courts, and subsequently nullify the entire Bill as unconstitutional.

Section 2. (*a*).—Delete ". . . claims under this Act, . . ."

We recommend that in lieu of the above language an insertion be made to the effect of ". . . payments of affected heirs of subject decedents, . . ." Such change

reflects our recommendations as cited above for Section 1. (b), whereby our contention is that the heirs would not be required to file claims and that their entitlements would be sent directly to them via certified check.

Section 2. (*b*).—Delete ". . . a reasonable search of the Department of Interior records, . . ."

Insert in lieu of above language ". . . Department of Interior conducted probates and/or Orders Determining Heirs, . . ."; reasoning is as indicated above.

Section 2. (*c*).—Delete in its entirety, as we recommend that the respective heirs not be mandated to file claims in order to receive their shares.

Section 3. (*a*).—Delete ". . . all claims and demands touching any of the matters involved in this controversy."

Insert in lieu thereof ". . . claims touching the monetary matters involved in this controversy." We stress this revision recommendation as, should the bill remain in its present form, the heirs would be barred from seeking relief in the court systems for land recovery based on improperly held sales of individual Indian trust land by the Department of Interior. Cases may be found where the land was sold through Bureau of Indian Affairs conducted sales for the exclusive purpose of reimbursing the State and/or County which assessed the Old Age Assistance Liens.

Section 3. (*b*).—Delete in its entirety for reasons stated above.

Section 3. (*c*).—Delete the dollar amounts indicated for each fiscal year and increase same to allow for a reasonable amount for program administration.

We encourage an addition be made in the appropriations to reflect a reasonable amount for program administration, probate costs, and interests on the principal. Such increases would be over and above the 1.5 million base settlement costs.

We further urge the Committee to include a stipulation whereby the Tribes are provided the option of administering the resolution fund disbursement under their auspices. Such action would sufficiently by-pass the Bureau of Indian Affairs which historically has inadequately maintained records and accounts.

We also advise that provisions be included whereby claimants whose claims are not documented as 28 U.S.C. 2415 claims may have similar recourse toward resolution. Such an allowance would be a step by the Department toward more fully discharging its obligation in this controversy.

Additionally, an escheatment clause should be added, whereby the funds which have not been disbursed to the proper heirs would escheat to the Tribe with which the decedents were enrolled. Implementation of this provision would occur after attempts have been exhausted in location of the proper heirs at the end of five years.

Senator ANDREWS. Our next witness is Yvette War Bonnet, who is the litigation director of the Dakota Plains Legal Services at Mission, S. Dak.

STATEMENT OF YVETTE HALL WAR BONNET, LITIGATION DIRECTOR, DAKOTA PLAINS LEGAL SERVICES, MISSION, S. DAK.

Ms. WAR BONNET. Thank you, Senator Andrews.

Senator ANDREWS. Yvette, let me assure you that your prepared statement will be put in the record in total, as if given. You may summarize it any way you wish, and then we can get to any questions that might help make a better record.

Ms. WAR BONNET. Thank you.

Dakota Plains Legal Services was one of the programs that participated with the Department of the Interior in documenting and researching claims in the summer of 1979. We have had extensive experience with this particular problem because we did most of the documentation for the eight reservations that we serve in South Dakota.

We are pleased to be here today, because when the whole thing happened with the extension last December, our offices were flooded with concerned claimants. I think that we can testify to the hardship that

would be presented to individual Indians who would be required to file any sort of a written claim. Even if the claim is sent through the mail, these people are uncertain with forms that are given to them, and it would necessitate trips either to the legal services office or to the Bureau office to resolve any problems with the written claim procedure. These people do not have the money. They do not have the resources, the transportation, or they have to hire it at excessive amount, to do this type of business. That would be completely counterproductive to the $10, $15, to $50 that they might receive under the claims procedure.

Therefore, we strongly urge that there be no written claims procedure. I think Interior has already indicated that they have the records. They are in sole possession of the records. They are going to determine who these claimants are, anyway. They should have the affirmative burden of identifying these people and making the payment.

We did receive a copy last year of a proposed bill that was drafted for Senator Cohen, and the language is very good in that proposal, which requires that the Bureau determine who the heirs are and then make payment. It specifically states in one section that there is to be no written claims procedures, that the claimants are not going to have any affirmative burden in this situation.

Senator ANDREWS. You say that part is in the bill that was submitted last year?

Ms. WAR BONNET. It was not actually introduced, but it was prepared last year.

Senator ANDREWS. Do you feel that would address the questions that I have explored with other witnesses?

Ms. WAR BONNET. It clearly states that the Secretary is to have that responsibility and that there is to be no responsibility for the claimant.

Senator ANDREWS. Do you feel that process would be an accurate enough one to make sure the money is paid to the right person?

Ms. WAR BONNET. I do, because they have all the records.

Another thing that I wanted to address was the identification issue, which was raised with another person who was testifying.

We were researching and documenting. The Bureau was doing identification under the contract procedure that we were involved with. I cannot say that all the claims are identified. Clearly, we have not had anyone come into our office saying that they have this type of a claim which has not been previously identified, but I think that is a product of how many years have gone by and the fact that these probate decisions were handed down and the money was disbursed maybe 20 to 30 years ago, and these people have no recollection. I cannot say for sure.

There are a lot of claims—we would estimate 1,500 claims—from the State of South Dakota, which is part of the Aberdeen area region, which have been identified. I cannot say that those are all the claims that are in existence.

We do feel that interest should be awarded on these claims basically as a matter of fairness.

One thing that I would point out is that in our research, a lot of times payments were made repeatedly out of these estates. In other

words, a claim would be allowed to the State of South Dakota Public Welfare Department in maybe $1,500 to $2,000, and these estates did not have that money. Therefore, there were successive payments made.

I think it would be fair to look at the last payment that was made out of the estate and then accrue the interest on that portion, on that amount, that total amount of disbursement.

In South Dakota, there was a continual process of paying off estates in the claims that we looked at.

On the dollar amount, it has now been clarified that it is $50 per estate. That satisfies us.

A lot of our claimants are unemployed. They might get general assistance of $20 a month or something. Clearly, even if they are only getting $25 or $20, that is money that they could use beneficially. We want to see them get the benefit of that money.

The last thing that I would like to say is that we feel that all of the money that has been taken from these estates wrongfully should be paid in some benefit to the tribe, if not to the individual persons. Therefore, in cases where the estates are less than $50, we would urge that this money go directly to the tribe for a specific purpose. We are suggesting scholarship funds. Some sort of tangible, then, would come directly back to the tribe, hopefully, and to the heirs who did not get direct payment.

I guess the final thing I would say is that we are concerned about the appropriations amount. It would be our estimate that there is probably $1 million worth of these claims in South Dakota, based upon the documentation that we did, for approximately 1,500 persons' claims. The amount that is currently here does not consider interest. Clearly, the appropriation is inadequate.

Senator ANDREWS. You are referring to the authorized amount?

Ms. WAR BONNET. Right, the authorized amount.

Senator ANDREWS. When I put on my other bonnet and go sit on the Appropriations Committee, we can see if——

Ms. WAR BONNET. Then actually appropriate?

Clearly, this amount would barely take care of the State of South Dakota. That is obviously not the intention. It is to look to all of the claims nationwide.

Senator ANDREWS. Let me follow up with one question. The South Dakota Legal Services, as I understand, took the lead in the process of identification of these claims. You mentioned that the smaller claims, the ones under $50 against an estate, should probably be paid to the tribes for their benefit, and I would say that is a reasonable suggestion.

However, in the examination of these claims, have you found any that were under $50 against an estate?

Ms. WAR BONNET. We have found them for as low as $10—the reason being that the original claim that was awarded to the State was significantly greater; but the trust, the IAM account, the deceased person's IAM account, did not have the money to pay off. Therefore, the procedure was stopped prior to the State's getting its full claim. Therefore, there are some cases where the claim against the estate that was actually paid to the State of South Dakota, would be less than $50.

Senator ANDREWS. Would that involve selling of land that they left?

Ms. WAR BONNET. No; we have no documentation that any land was sold, but what they continued to do was collect the lease income or the income that was generated from the trust land, put it in this deceased person's account until it had paid off all the claim.

Senator ANDREWS. Thank you very much.

[The prepared statement follows:]

PREPARED STATEMENT OF YVETTE HALL WAR BONNET, LITIGATION DIRECTOR, DAKOTA PLAINS LEGAL SERVICES, MISSION, SOUTH DAKOTA

My name is Yvette Hall War Bonnet. I am the Litigation Director of Dakota Plains Legal Services and in that capacity I have been involved with the land claims known as § 2415 claims for the last four years. Originally, Dakota Plains contracted with the Bureau of Indian Affairs in the Aberdeen Area to research and document claims during the summer of 1979. Most recently, during November and December of 1982, our program which serves the Indian population of eight reservations in South Dakota saw hundreds of claimants in response to the Department of the Interior's legal notices that they must act by December 31, 1982 to preserve their § 2415 claims.

I am pleased that our program was asked today to testify regarding Senate Bill S. 1151 which seeks to address the old age assistance claims in South Dakota and nationwide. I am here today to urge that a number of substantive changes be made in the legislation as it is presently drafted.

First, I would request that a procedure for paying these claims be adopted which does not require individuals to file claims, but requires the Department of Interior to identify and make payment to eligible heirs, legatees and devisees. This is contrary to the provision in Section 1(b) of S. 1151 which requires claimants to file written claims. However, given the fact that the records which will determine whether an individual is an eligible heir to a particular deceased Indian's estate are solely within the possession of the Department and since S. 1151 already requires in Section 2(b) that the Department is to make a reasonable search of its records to determine prospective claimants and give them notice of their rights, the better solution is to have the Department of Interior make a determination based on a review of its records as to their heirs, legatees or devisees of a deceased Indian. Then the Department should be required to pay an equal share of the amount disbursed without authorization from the affected trust estate to these identified individuals.

I believe this is the best method of handling these claims, especially when you consider the difficulties and hardships that an average individual claimant would face in filing a written claim. There is a problem with the distance between the BIA Agency office and an individual's home which can be as far as 80 to 100 miles. It is our program's experience that a significant number of the individuals who will be claimants are impoverished and do not have transportation nor the money to hire a ride to their local BIA Agency to file a claim. Therefore, they would have trouble filing a written claim at the Agency office. Even if claim forms were sent through the mails for completion, questions and concerns generated by these forms would still necessitate a costly visit to the local agency for the individual claimant. Where a claimant is entitled to a small amount under this legislation, it seems counter-productive to have the claimant spending that amount of money or more simply to perfect his/her claim in written form. Also, our program was contacted last December by heirs from as far away as Hawaii concerned about the preservation of their § 2415 claims. The difficulties I have been describing are pertinent to our clients, but many of these off-reservation heirs, devisees and legatees who are now located all over the country, would never be able to participate in the claims procedure in S. 1151 because of lack of notice and access to their local BIA Agency. The Department is the keeper of the records which will identify and establish the eligible claimants for each affected trust estate and it should be responsible for determining eligible claimants.

In regard to the Department identifying and establishing the eligible heirs, legatees and devisees, I do have one additional concern which I believe can be solved by setting the effective date of this legislation as the date used by the Department to determine who are the heirs, legatees and devisees of a particular estate. If there is no specific reference date, then there will be affected

estates whose lists of heirs, legatees and devisees may change several times in the course of the implementation of this Act. It will certainly lessen the Department's administrative task, if it is able to look to a specific date and determine the heirs, legatees and devisees of a particular estate as of that date. If an individual heir, legatee or devisee should die prior to any payment under this Act, then the payment would simply be payable to the estate of the deceased heir, legatee and devisee.

Secondly, I would like to urge that any payment made under this Act include simple interest at a rate of 6 percent per annum from the date of the last reimbursement from an affected trust estate. It is the position of my program and a number of other Indian legal services programs with clients affected by this legislation that interest is required to fairly and adequately compensate the individual claimants for the loss they have suffered by being denied the beneficial use of these monies for approximately twenty years.

In our program's documentation of old age assistance claims, we found that many estates paid small amounts over a period of years attempting to meet the amount of the claim awarded to the Department of Public Welfare for the State of South Dakota. Therefore, I am suggesting that the interest accrue from the date of the final disbursement from the affected trust estate on the total amount paid from that estate. Again, I think this will be less complicated for the administrative agency.

The third area I wish to address in Section 1(b) of the proposed legislation which states that no claim in the amount of less than fifty dollars ($50.00) shall be paid by the Department. I am interested in the justification for this amount as the cut off for payment. I am assuming that this limit as written refers to individual claims and certainly an amount of twenty-five dollars ($25.00) or lower would be meaningful to many of our clients who are eligible claimants under this legislation. Some individuals who receive General Assistance or are unemployed would double their income for a month with twenty-five dollars ($25.00). On behalf of our clients we would urge that the lowest dollar limit which is practical be implemented.

It is also our recommendation that any amounts not paid because they are less than the minimum award specified in the legislation by paid to the Tribe in which the deceased Indian was enrolled for the purpose of providing scholarship funds for enrolled members of that Tribe. In addition, we would urge that the amounts paid from any trust estate with no identifiable heirs, legatees and devisees be awarded to the Tribe for scholarship use. While a number of ideas were considered as possible uses for funds paid to the individual Tribes, it was felt that education of enrolled members would give the most lasting and pervasive benefit to the Tribe and hopefully help to improve the quality of life for individual Indians including the heirs, legatees and devisees who did not receive direct payment.

The language implementing this recommendation should make the awards to the individual Tribes affected, but also clearly state that all funds so received shall be used as scholarship funds for enrolled members of the Tribe. We feel that this award to the Tribe will make this legislation more palatable to individual heirs, legatees and devisees who will not be receiving a cash award under this Act rather than simply losing all benefit of the funds. In honor of their deceased ancestors, there will be tangible benefit flowing to the Tribe in the form of funds to use for educating enrolled members of the Tribe.

It is important to note that all of the points I have raised above were addressed to our satisfaction in the draft legislation prepared for Senator Cohen in the 97th Congress. Section 3(a) of that bill provide that the Secretary of Interior pay the heirs, legatees and devisees which he/she has determined to be eligible after a review of the Department's records. Section 5(a)(1) specifically forbids a claims procedure when it states "The Secretary shall not require such person to file a claim in order to receive payment under Section 3."

The Cohen draft also includes a provision in Section 3(b) for simple interest to be paid at a rate of 5 percent per annum on any payment made by the Secretary. Finally, this proposal allows payment to an individual if the amount is not less than twenty-five dollar ($25.00). I would urge that the committee look to this draft as to the points I have raised. In addition, the draft contains excellent language for the procedure to be used in notifying persons entitled to payment and allowing persons to dispute any payment determination. These provisions would adequately protect our clients' interest in payment of these funds and I would urge their adoption.

The last concern I raise addresses the amount of the appropriation requested in S. 1151. Our program's documentation of old age assistance claims in the summer of 1979 for the Tribes in South Dakota produced approximately 1,500 claims valued at nearly one million dollars. To have meaningful legislation, it is incumbent upon the Department to provide the committee with exact figures as to the number of claims and their values. This information is in the possession of the Department and these claims are readily quantifiable as to dollar amount contrary perhaps to some of the other types of § 2415 claims.

Thank you for your time and consideration of our concerns with S. 1151. To have legislation which will fairly compensate the beneficiaries of the affected trust estates, we have made these recommendations. We urge your help in assuring these necessary changes are made in any final legislation coming from this committee. Thank you.

Senator ANDREWS. Our next witness is Norman Hollow, who is the chairman of the Assiniboine and Sioux Tribes from Fort Peck, Mont. Mr. Hollow?

STATEMENT OF NORMAN HOLLOW, CHAIRMAN, ASSINIBOINE AND SIOUX TRIBES, FORT PECK, MONT., ACCOMPANIED BY MARY BARNEY, ASSOCIATE WITH SONOSKY, CHAMBERS, SACHSE & GUIDO

Mr. HOLLOW. Mr. Chairman, I appreciate the opportunity to testify on behalf of S. 1151. Mr. Sonosky will summarize the highlights of my testimony. However, before he does so, I would also like to offer a few brief comments in relation to some of the remarks that have been made by some of the witnesses and also in relation to some of the questions that are being raised.

The Department not only agreed that States should be reimbursed, but they have agreed that they served as a collection agency. As a result of this policy, they issued regulations to enforce a collection policy. For that reason, I think it is very essential that proper legislation be enacted to take care of some of these irregularities that have existed in the past involving cases where the Indian people have been treated very unfairly.

We can cite numerous cases where Indian people were not treated in the same manner as other people receiving welfare in the State of Montana. I do not know what existed in other States, but I am quite familiar with what existed in the State of Montana. In the State of Montana, when it comes to welfare assistance for Indian people, they did not receive as much assistance as welfare assistance that was made available to non-Indian people. This was primarily brought about as a result of regulations established by the Bureau of Indian Affairs.

What is needed is legislation that will require the Department of the Interior to account for every penny that has been wrongfully collected on behalf of the welfare assistance to Indian people. They should be required to determine the amount, including the interest, starting from the date that they made the collections.

I also noticed that there were questions raised about what particular period of time should be required for notification. I feel that anywhere from 6 months to 1 year should be provided for notification of the heirs that a particular authority on specific legislation is available for collections of funds that they would otherwise be rightfully entitled to.

S. 1151 falls far short of doing an adequate job. The bill does not provide for interest, as I mentioned earlier, but it permits the United States to keep the principal if the claim is less than $50. I think this is very unfair. Regardless of how small the amount is, when you include the interest rate, eventually it will amount to a figure that would be of substantial benefit to the Indian people, when you take into consideration the poverty-stricken areas in which the Indian people are required to live.

For that reason, I think, regardless of the smallest amount that we might be talking about, whatever figure it might be, it would be of great benefit to the Indian people.

The bill also provides for publishing the list of deceased Indians in the Federal Register. Apparently, the Department of the Interior feels that every Indian has the opportunity to read the Federal Register. I think that this should not be part of the requirement, placing the burden upon the Indian people to read the Federal Register to realize what is required of them to take benefit of Federal legislation enacted in their behalf.

Senator ANDREWS. Mr. Chairman, as the elected leader of your people, 5 will get you 10 you do not read the Federal Register.

Mr. HOLLOW. I read it occasionally.

Senator ANDREWS. Do you?

Mr. HOLLOW. That is correct.

Senator ANDREWS. That is more than I do.

Mr. HOLLOW. I read it when our attorney, Marvin Sonosky, calls my attention to the fact that there is a certain issue of importance that I should be familiar with.

Senator ANDREWS. That is why you have to pay these attorneys.

Mr. HOLLOW. That is right.

Senator ANDREWS. I will bet the Assistant Secretary sitting over there does not read the Federal Register day by day, either.

No, you are absolutely right it should not be incumbent on the Indian people to find out from the Federal Register where they can make a claim. There has to be some better way.

I think, in all fairness, the Secretary did indicate in earlier questioning that he felt that there might be merit in making the payments direct, so that we avoided this kind of paperwork for the Indian people and the duplication of effort on the part of BIA employees.

You mentioned the level of claims. How many claims do you have in the Fort Peck area?

Mr. HOLLOW. I do not recall the exact number, but what we have been able to uncover, up to this point, I believe, is about a three-page listing of individuals.

Senator ANDREWS. Are many of those under $50?

Mr. HOLLOW. I could not say right at the moment. I am sure that our attorney has some figures on that.

Are you familiar with that, Mary?

Ms. BARNEY. I saw one claim under $50.

Senator ANDREWS. What we are trying to do is ascertain if there are many in the area under $50, so we are not talking about either a heavy burden to process the smaller claims or the fact that a number of people will be disadvantaged if we retain that level.

Mary, would you state your full name for the record?

Ms. BARNEY. Yes. My name is Mary Barney. I am an associate with Sonosky, Chambers, Sachse & Guido.

Senator ANDREWS. Thank you very much.

Mr. HOLLOW. Senator, with that, I will turn it over to our attorney, Mr. Sonosky.

[The prepared statement follows:]

PREPARED STATEMENT OF NORMAN HOLLOW, CHAIRMAN, ASSINIBOINE AND SIOUX TRIBES, FORT PECK RESERVATION, MONT.

Mr. Chairman and members of the Committee: My name is Norman Hollow. I am the Chairman of the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana. You may be sure that I appreciate this opportunity to testify on S. 1151, a bill to reimburse Indians for old age assistance payments the United States made to the States out of trust money.

The Social Security Act adopted in 1935 provided for old age assistance benefits to all poor senior citizens of the United States. In the case of Montana, North Dakota and South Dakota, the United States paid the major portion of old age assistance benefits. Those States paid only a relatively small part. I don't know how other states dealt with nonIndians but I know that Montana held the payments to Indians to the lowest possible amount. If a nonIndian in the city rented a house or an apartment, he got a rental allowance. If he had to pay for his own utilities, he got an allowance for water, gas, electricity and heat. But when the State social worker got to an Indian living in a log cabin on the reservation, it was a different story. The social worker allowed nothing for rent. Very often, the Indian didn't have electricity or running water so the social worker allowed nothing for utilities. The Indian heated with a woodstove. If he had a woodpile in back of the cabin, the social worker allowed nothing for heat.

Then, as now, states were reluctant to give Indians the same services they rendered to other citizens of the state. They knew that the Indians had little or no income, otherwise they would not have been eligible for the old age benefits. They also knew that some Indians owned trust land. So the state went to the Bureau of Indian Affairs and demanded that on the death of the Indian, the Bureau pay back to the state 100 percent of the old age payments out of any money derived from income or from the sale of the trust land.

One would think that with the dozens of Supreme Court decisions on the books going back 100 years, the Department of the Interior would know that trust land and the income from trust land cannot be charged with any lien, claim, or debt whatsoever. The Department knew it all right, but those were days when non-Indians ran Indian affairs. They aimed to please the states. After all, what was there to fear from unorganized, poor, old Indians. They had no representation other than their so-called trustee, the Department itself. Those poor people had no more political muscle than a weak kitten.

The Department not only agreed that the states should be reimbursed, but agreed that the Bureau should act as a collection agency for the states. This the Bureau did by issuing regulations directing that upon the death of an Indian who had received old age assistance, the states should be a preferred creditor. (25 CFR 81.25 (1947) and 25 CFR 15.25 (1958).) I am reliably informed that not only were old age assistance claims given priority over general creditors, but the claims were made a perpetual lien until collected. There was no cut-off period for states, as there was for general creditors. (25 CFR 15.25(b) (1947 and 1958).) The Secretary withheld distribution of the estate, even after heirs were determined, until the Bureau collected the states' claims.

The Department turned a deaf ear to the complaints of individual Indians. Finally, around 1958, our present General Counsel, Marvin J. Sonosky, undertook to see what could be done. He took the matter up with the Department of the Interior with no success. He tells me that Interior officials acted surprised that anyone would suggest that the Bureau should not pay the states. Finally, Mr. Sonosky took an appeal on behalf of the heirs of James Running Horse from the order of the inheritance examiner directing that the State be paid out of the trust funds derived from the lease income of the *Running Horse* trust land. The Secretary ruled against the *Running Horse* heirs and wrote an opinion.

Mr. Sonosky then filed suit against the Secretary in the District of Columbia. The federal judge had no trouble at all in rejecting Interior's position and in ruling that trust money and money derived from trust land was not available for payment of the state's old age assistance claims. The Secretary knew the court was right and he was wrong because he took an appeal and then dismissed it.

That took care of the *Running Horse* heirs and of all future payments of old age assistance made to Indians in the United States. But, the Government did nothing about reimbursing the Indians whose money it had collected and unlawfully paid over to the states. Interior just hoped the problem would go away. And maybe it would have stayed buried, if it had not been for the anticipated expiration of the limitations period for filing suit. The research on the limitations problems forced Interior to do something—either sue the states or propose a legislative solution. Apparently, S. 1151, proposed by Interior, is the Secretary's answer.

S. 1151 should be examined against this background. Interior broke the law. Interior treated the Indians entrusted to its guardianship unfairly and dishonorably when it took the individual Indian's trust money and delivered it to the states. The Government can never make up for what it did, but the least it can do is try to put the Indian owners of that money in as good a position as they would have been if the money had been paid to them when it was due. By that test, S. 1151 falls far short of what a responsible Government should do even to partially make up for its actions.

What is needed is legislation that will require Interior to account for every penny that was wrongfully paid over to the states. Interior should be required to determine that amount, state by state, and place the total sum in an interest-bearing account the same as it does with other trust moneys. The burden should then be on Interior to search out every living Indian and pay that Indian what he has coming together with interest at the same rate earned by other trust moneys from the date the money should have been paid to the date of payment. Most of these heirs can be found through examination of the Department's probate records, the Bureau's records, the tribes' records and consultation with relatives at the local level. Once heirs are located, they should be notified that money is due to them and requested to apply for payment within a specified period of six months or a year. Heirs who cannot be located should be notified by publication and given a longer period to apply for the money. Any unpaid funds remaining after all efforts to pay the heirs have been exhausted should escheat to the tribe in which the deceased Indian was enrolled or, if the decedent was not a tribal member, to the tribe of the reservation on which the land was located.

S. 1151 falls far short of doing the job. S. 1151 is Interior's cheap, miserly and stingy way of trying to put a good face on its disgraceful behavior. The bill provides for no interest even though the United States took one person's money and gave it to another. When the State was reimbursed for the old age assistance benefits, it repaid to the United States the Federal contribution. And now Interior does not want to pay interest even though the United States had the free use of this money.

Not only does the bill provide for no interest but it permits the United States to keep the principal if the claim is $50 or less.

The bill provides for publishing the list of deceased Indians in the Federal Register. That list will run into thousands of names. Interior apparently considers that all Indians read the Federal Register every day. This is not a fair notice.

The bill talks about furnishing notice where the names of heirs can be found by a reasonable search of Interior's records. The law should be more specific. The search should include records of the tribes and consultation with relatives and others at the local level. The langauge in the bill does not suggest a thorough search but seems to leave too much to the discretion of the Secretary.

For those heirs that the Secretary does not find in his search of Interior's records, the bill calls for publication of a general notice explaining the Act and the procedures for filing claims. This puts the burden on the Indian who was cheated out of his money because the Secretary failed to honor the promises of the United States to hold trust property free from claims. The burden should be on the violator.

Finally, the bill makes the Secretary's decision final. There is no provision for review in the courts. The United States provides judicial review for social security

claims. The heirs' money was paid out to satisfy a claim that arose out of the Social Security Act. Just because Indians are involved is no reason to deny judicial review. We are citizens too.

S. 1151 should be rewritten to accomplish a fair result.

Senator ANDREWS. Mr. Sonosky.

STATEMENT OF MARVIN SONOSKY, ATTORNEY, SONOSKY, CHAMBERS, SACHSE & GUIDO, WASHINGTON, D.C.

Senator ANDREWS. First, let me ask a question.

You handled the Black Hills claim, too, as I understand it, so you are aware of the interest that was granted in that particular claim. What interest was that, Mr. Sonosky?

Mr. SONOSKY. The Court of Claims allows 5-percent interest on ancient claims. By "ancient", I mean claims that run back 100, 125 years.

Commencing about 1968, the Court of Claims began recognizing that interest rates are higher, and they measure interest now by the rate of interest on high-class corporate bonds. It has been running, depending on the period, going back to the sixties, all the way from 8 percent to 14 percent.

Senator ANDREWS. Thank you very much for that.

Do you have anything to add to the chairman's comments?

Mr. SONOSKY. Mr. Chairman, when you get to be an old man, you see some of the things that you did in your youth come back, not always to plague you.

This business of taking Indians' money and paying it to the State was something that the Department of the Interior knew it had no authority to do, but it was something that it responded to at the insistence of States to get some kind of reimbursement, because the States were getting reimbursed from non-Indians.

To accomplish this, Interior incorporated in the probate proceedings a power it did not otherwise have. When an Indian died and left trust land, Interior would determine his heirs but not close the estate, hold the estate open until enough income came off of that land to pay the State back its indebtedness. Sometimes the land was sold, not in the sense of a foreclosure of a lien, but because the Indian heirs were simply just sick and tired of waiting to pay the State back $3,000 at $150 a month, and they would say, "Let's sell the land and get done with it." They would consent to the sale in that sense, and then the land would be sold, the State would be paid, and they would get the balance.

Remember, the State did not keep all the money reimbursed. In the State of North Dakota, for example, roughly 70 percent of old age assistance was Federal money contributed to the State. When the State got paid back, it had to reimburse the United States. That is true not only in North Dakota, South Dakota, and Montana, but other States. The proportion that the State contributed and the United States contributed depended, as I recall, on the per capita income. In those days per capita income was not that high in South Dakota. It was not that high in North Dakota, because oil and gas development, and so forth, had not yet come in.

Now we have a situation where the United States, without authority, has taken the Indians' money; kept it; used a substantial part

of it themselves, free of cost; kept quiet about this whole thing; never came up with a proposition to clean up this dishonorable and unfair act that it had committed until forced by the work of these people who are doing the research on the limitations.

When they were forced, they came up with this legislative solution. I agree wholeheartedly with the chairman's approach to this solution. If Interior had behaved the way IRS behaves and mailed out the checks, that would be one thing, this legislative solution is set up as a means of accomplishing something in the cheapest possible way. Considering the dishonorable and unfair background in which we are approaching this legislation, the Department should be required, and Congress should direct, that the indebtedness to the Indians be treated the same way as a court would treat it.

This is trust money. The United States knows how much money it paid out wrongfully. All that money should be put in a fund. That fund should be invested the same as any other Indian moneys are invested at interest. Trust moneys are invested at interest today, and usually in CD's. Then, with that money in deposit, the Department should go about following the chairman's suggestions in mailing to each one of these people the checks which each is entitled to receive, together with interest from the date of payment.

To the extent, after publication, that they cannot find any of the heirs that they know or believe are entitled to the money, the money should escheat to the tribe. Escheat is something that the Congress has authorized before for Indian tribes. I think there is a statute on the books now that authorizes that after 6 years that, if there can be no heir found for money that belongs to an individual Indian, that money escheats to the tribe.

Senator ANDREWS. Counselor, you have been most helpful. Let me assure you of a couple things.

No. 1, first of all, this bill is an administration bill, which I think shows the initiative and the good faith in moving in the direction to right this wrong that was done over a period of many years before, many administrations before.

No. 2, inasmuch as it is an administration bill, I know only one way of running this committee, and that is to have our staff work over it, and come up with some of the changes.

I think it should be gratifying to you, counselor, that earlier the Assistant Secretary did, in fact, agree that there probably could be some method worked out more beneficial to the Indian people for direct payment and less costly for Government redtape, which shows that he is on the right track.

I would imagine that this kind of compromise will, in fact, be worked out, but let me add one final comment. That is the reason we have these hearings. That is really the reason for 200 years that this country has worked pretty well, because this is the people's branch.

The best way to find out where the kinks are in some proposal by the executive branch is to run it through this process of open public hearings with the staff and members of the committee, who want to have the interaction of the people out in the field. We really find out where the problems are before we finalize the bill.

I want to assure you that your remarks, and the remarks of the other witnesses, have been most helpful.

Mr. SONOSKY. Mr. Chairman, what you have just said is wonderful. We could not appreciate more what you have just said. This is the people's forum.

There should be no law passed where these people do not have an opportunity to present their views and an opportunity for hearing.

Senator ANDREWS. We cannot guarantee you that every single suggestion is going to be incorporated.

Mr. SONOSKY. Oh, no. We understand that.

Senator ANDREWS. However, we are sure going to go a long way in that direction as long as I am chairman of this committee, or in any committee of which I am chairman.

Mr. SONOSKY. You cannot satisfy everybody, but you will try to reconcile.

Senator ANDREWS. We are trying to get as good a piece of legislation as we can. We have to do it in context with the administration. They deserve a good deal of credit for sending up the draft in the first place.

Mr. SONOSKY. Yes, and I heard the Deputy Assistant Secretary this morning, and I understand him to say that the $50 they were using was the minimum for the estate.

Senator ANDREWS. That is the way we are getting it.

Mr. SONOSKY. I understood him that way and that he was going to look at your suggestion.

Senator ANDREWS. Do you think that offers a good deal of question as far as the size limitation, when it is $50 per estate instead of $50 per individual?

Mr. SONOSKY. From a white man's standpoint, it is kind of silly to write a check when it costs more to write the check than the amount of the check. However, from the Indian's standpoint, he feels wronged that this was taken from him when he had nothing he could do about it, and that the United States should be made to pay back every penny.

Senator ANDREWS. However, inasmuch as we are not taking the white man's standpoint here, and we are trying to do the right thing by the Indian people, the suggestion of the Secretary and the consideration that the committee is giving it that we look at the estate—if the estate had a $50 gross, or even maybe a $25 gross, I do not know where the figures will come down—it might entail the payment of some $5 checks.

The payment of a $5 check is not the expensive thing. The processing, the examination of a $5 estate claim is the expense. When the estate claim is at or above the $50 figure, then it justifies being processed. You can write checks for a pretty reasonable amount.

Mr. SONOSKY. With a computer. I agree, Mr. Chairman.

Senator ANDREWS. At least we can see that it is done, Counselor.

Mr. SONOSKY. May I offer, for the record, the opinion of the U.S. District Court for the District of Columbia in 1962, which held that the Secretary had no authority to pay out of trust assets?

Senator ANDREWS. We appreciate that. It will be made a part of the record at this point.

[The opinion follows:]

Mary Hit Him RUNNING HORSE et al., Plaintiffs,

v.

Stewart UDALL, Secretary of the Interior, Defendant.

Civ. No. 2106-60.

United States District Court
District of Columbia.
Dec. 10, 1962.

Action by the heirs of certain Indian trust lands to discharge as a charge or encumbrance against the land a state claim for old age assistance furnished to the plaintiffs' ancestor. The District Court, Hart, J., held that the allowance of the state claim against the trust property and against the income accruing to plaintiffs therefrom after decedent's death was unlawful and void.

Order for plaintiffs.

1. Indians ⇐18

The allowance by Secretary of Interior of the claim of a state for old age assistance furnished an Indian decedent, requiring the payment thereof by heirs of decedent's trust lands from proceeds of sale of lands or from income therefrom, constituted a charge or encumbrance against trust property. Sioux Allotment Act of 1889, 25 Stat. 888.

2. Indians ⇐15(1), 18

The allowance of a state claim against Indian trust lands for old age assistance furnished decedent, providing for payment from proceeds of sale of lands or from revenues therefrom was invalid as beyond authority of Secretary of Interior. Sioux Allotment Act of 1889, 25 Stat. 888; General Allotment Act of 1887, § 6 as amended 25 U.S.C.A. § 349; 25 U.S.C.A. §§ 372, 410.

3. Indians ⇐18

Secretary of Interior is not authorized to direct payment of debts of a deceased Indian out of moneys accruing after death from trust lands in the hands of the decedent's Indian heirs. 25 U.S.C.A. §§ 372, 410.

4. Indians ⇐15(1)

Secretary of Interior's general administrative practice with respect to payment of state welfare assistance claims from trust assets of the estate of a deceased Indian are unauthorized. General Allotment Act of 1887, § 6 as amended 25 U.S.C.A. § 349; 25 U.S.C.A. § 372; Sioux Allotment Act of 1889, 25 Stat. 888.

Marvin J. Sonosky, Washington, D. C., for plaintiff Indians.

Floyd L. France, Washington, D. C., for Secretary of the Interior.

HART, District Judge.

The above entitled cause came on regularly for trial and the Court upon the administrative record made before the defendant as stipulated by the parties, upon certain additional documentary evidence introduced at trial, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The plaintiffs are citizens of the United States, residents of the Rosebud Sioux Indian Reservation, South Dakota, and are Indians duly enrolled as members of the Rosebud Sioux Indian Tribe of South Dakota.

2. The defendant is the Secretary of the Interior and as such is charged with the administration of the laws relating to the supervision, care and protection of individual Indian trust or restricted property, including the trust property here in suit.

3. Plaintiffs are the lawful heirs of James Running Horse, a full blood Indian enrolled in the Rosebud Sioux Indian Tribe of South Dakota, who died intestate seized of 172.07 acres of land located on the Rosebud Indian Reservation and held by the United States in trust for him and his Indian heirs. At the time of death the decedent left no other assets.

4. The land referred to above originally was allotted by trust patent No. 276674 dated June 18, 1912, from the United States to Abraham Running Horse, Rosebud Sioux Allottee No. 6095, and inherited by James Running Horse from the trust patentee. The trust patent was issued under the Sioux Allotment Act of March 2, 1889, 25 Stat. 888, which by reference incorporates the provisions of Section 6 of the General Allotment Act of February 8, 1887, 24 Stat. 390, 25 U.S.C. § 349, as amended. Under the terms of the Sioux Allotment Act, the United States agreed to hold the land, "in trust for the sole use and benefit" of Abraham Running Horse or, in the case of his death, of his heirs; and further agreed, upon the expiration of the trust period, to convey the land to Abraham Running Horse or, in case of his death, to his heirs, "in fee, discharged of said trust and free of all charge or incumbrance whatsoever: * * *"; and further agreed that such trust lands

"shall not be liable to the satisfaction of any debt contracted prior to the issuing of such [fee] patent: * * *" The trust period is now and was in effect at all times material to this case.

5. Pursuant to the Act of June 25, 1910, 36 Stat. 855, as amended, 25 U.S.C. § 372, the Secretary of the Interior, through his duly authorized Examiner of Inheritance, entered an order dated October 17, 1958, determining the plaintiffs to be the heirs of James Running Horse, deceased, with respect to the trust property owned by James Running Horse at the time of his death.

6. The Examiner's order determining heirs also allowed the claim of South Dakota, Department of Public Welfare, in the amount of $3,774.50 for old age assistance payments made to the decedent during his lifetime "in full, after payment of the costs of the hearing, or in the amount of the cash on hand to the credit of the estate at the time of the decedent's death plus the gross income accruing to the estate for the period of five (5) years following the death of the decedent, whichever is less." The order in effect directs payment to South Dakota by plaintiffs (to whom the property passed upon James' death by operation of law) from the gross income accruing to them from the trust property for five years.

7. By decision (IA–1048) dated May 26, 1960, under authority of the defendant, the action of the Examiner of Inheritance was affirmed and the appeal dismissed.

8. Defendant's general administrative practice with respect to the payment of state welfare assistance claims allowed against the trust assets of the estate of a deceased Indian is as follows:

(a) Where an Indian heir or devisee wishes to lease his inherited or devised trust lands, the defendant will approve such lease only on condition that the lessee pay the rental to the defendant so that the defendant may apply such rental to the payment of any state welfare assistance claim against the Indian lessor's intestate or testator.

(b) Where an Indian heir or devisee wishes to sell his inherited or devised trust land, the defendant will approve such sale only on condition that any state welfare assistance claim against the vendor's intestate or testator be satisfied out of the proceeds of sale.

9. Plaintiffs exhausted their administrative remedy.

CONCLUSIONS OF LAW

[1] 1. The action of the defendant in allowing the claim of South Dakota makes the claim a charge or encumbrance against the trust property and against the income accruing therefrom to plaintiffs after decedent's death.

[2] 2. The allowance of the claim of South Dakota is beyond the authority vested in the Secretary of the Interior and is unlawful and void in that:

(a) The Secretary is not authorized by law to allow debts incurred by an Indian decedent as a charge or encumbrance against the decedent's trust property in the hands of his Indian heirs.

(b) The action of the Secretary violates the obligations of the United States to hold the trust land for "the sole use and benefit" of the plaintiffs, as the Indian heirs of the decedent.

(c) The action of the Secretary violates the obligations of the United States to deliver the trust property and the trust proceeds derived therefrom to the heirs free and clear of all charges or encumbrances whatsoever.

(d) The action of the Secretary violates the statutory requirement that the trust property "shall not be liable to the satisfaction of any debt" contracted prior to the issuance of a patent in fee.

[3] 3. Neither 25 U.S.C. § 372 nor 25 U.S.C. § 410 authorizes the defendant to direct payment of the debts of a deceased Indian out of moneys accruing after death from trust lands in the hands of such decedent's Indian heirs.

[4] 4. The defendant's general administrative practice set forth in Finding No. 8 is unauthorized by law and in violation of the statutes set forth in Finding No. 4.

5. Defendant's regulations appearing at 25 CFR §§ 15.25(a) (5) are invalid as applied in this case.

6. Insofar as the opinion of defendant's Solicitor reported at 61 I.D. 37 (1952) is inconsistent herewith, that decision is erroneous.

Counsel will file an Order consistent with these findings.

Senator ANDREWS. Our next witness is Paul Iron Cloud from the Pine Ridge Reservation.

Mr. Iron Cloud, welcome to the hearing.

We have your statement. Let me assure you that it will appear in the record as if given in total, and you can summarize it in any way you wish.

STATEMENT OF PAUL IRON CLOUD, COUNCILMAN AND CHAIRMAN OF THE LAND COMMITTEE, OGLALA SIOUX INDIAN TRIBE, PINE RIDGE, S. DAK.

Mr. IRON CLOUD. Thank you, Mr. Chairman.

I think it is a great honor to be here today to testify on S. 1151.

I am a member of the Oglala Sioux Tribal Council and the Land Committee chairman.

Mr. Chairman, the Oglala Sioux Tribe agrees that it is important to take steps to resolve approximately 5,000 outstanding claims for improper reimbursements to States and local subdivisions from estates of deceased Indians for old-age assistance.

Five hundred of these claims concern the Oglala Sioux Tribe, Oglala Sioux estates. We do not believe, however, that S. 1151, the administration's proposal, is the proper or fair way to resolve these claims.

Mr. Chairman, I will briefly summarize my testimony.

We agree with the statements of the witnesses that BIA should have responsibility to determine who the heirs are. We also strongly urge the committee to pay interest on these claims.

We are pleased that the committee will clarify the estate claims of $50 or more shall be paid, even if that means paying each heir less than $50.

S. 1151 allows the Government to profit from its own breach of trust. It makes no provisions for the use of moneys that are awarded because heirs cannot be found or because the total claims are too small.

We hope the committee will agree with us that all unawarded amounts be paid to the tribes of deceased Indians to be used for tribal purposes. We urge the committee to include such amendment in this bill.

I think the people that cannot be identified and the moneys that the Government will take back—I think this money should be put into some type of a fund.

The Oglala Sioux Tribe's administration is in tough shape due to the economy. We would like to see this money put into education of some type or given to our elderly people for various purposes for which they come to our tribal office every day needing assistance. This would be a great help to our Indian people.

Thank you.

Senator ANDREWS. Thank you very much for an excellent statement. You, in essence, agree with the points that we have discussed with the prior witnesses?

Mr. IRON CLOUD. Right.

Senator ANDREWS. Do you think that the bill we have discussed, in its final form would be a good one, and would apply to your people in an equitable and fair manner?

Mr. IRON CLOUD. Right.

Senator ANDREWS. Thank you very much.

Mr. IRON CLOUD. Mr. Chairman, I would like to introduce our attorney, Ms. Carol Barbero. I also have with me the chairman of the Oglala Sioux Tribe, Joe American Horse.

Senator ANDREWS. It is good to have you here. It is nice to see you, Mr. Chairman. Welcome to the hearing.

Thank you very much.

[The prepared statement follows:]

PREPARED STATEMENT OF COUNCILMAN PAUL IRON CLOUD ON BEHALF OF THE OGLALA SIOUX TRIBE OF THE PINE RIDGE RESERVATION

Mr. Chairman and Members of the Committee: My name is Paul Iron Cloud. I am a member of the Oglala Sioux Tribal Council and appear here today to present testimony concerning S. 1151 on behalf of the Oglala Sioux Tribe.

Mr. Chairman, the Oglala Sioux Tribe agrees that it is important to take steps to resolve the approximately 5,000 outstanding claims for improper reimbursements to states and local subdivisions from the estates of deceased Indians for old age assistance. We do not believe, however, that S. 1151, the Administration's proposal, is the proper or fair way to resolve these claims. We have several objections to this bill.

First, why must the heirs of the deceased Indians bear the responsibility for initiating the claims for reimbursement? The United States, the Indians' trustee, committed the improper action in the first place. Yet this bill requires the now-living heirs to determine whether any of their ancestors' trust accounts were improperly debited, and to identify all of the heirs legally entitled to share the amount of reimbursement due. In many, many cases, this will be an impossible task for the heirs to perform. I strongly urge the Committee to place the burden on the BIA to identify the heirs and to notify them of their legal right to reimbursement. Certainly the Government is far better equipped to perform this search than are the heirs of some 5,000 people whose deaths occurred perhaps a generation ago.

Second, we strongly object to the bill's provision that prohibits payment of interest on the amounts paid to the heirs. Our Government trustee authorized the improper disbursement of millions of dollars from the accounts of its deceased Indians. The trustee has recognized its costly errors. Yet this bill compounds those errors by denying interest payments to the Indian beneficiaries.

If this no-interest provision is designed to save the Government money, it most likely will not serve that purpose. The Indian beneficiary will have two options to choose between. He could file his claim under this bill where he would not be entitled to interest. Or he could file a lawsuit for the amount due, plus interest from the date the improper payment was made. Certainly involvement in such litigation, commenced by individual Indians or tribes throughout the country, would involve far greater expense to the Government. I strongly urge this Committee to add a fair and equitable interest rate allowance to claims processed under this bill.

Third, S. 1151 prohibits the payment of any claim for less than $50. Does this mean that each legal heir entitled to share in a claim must be entitled to at least $50 in order to receive an award? If so, it is very possible that an estate from which a $500 payment was improperly made would not give rise to any claim merely because 11 or more heirs are entitled to equal shares. On the other hand, a $50 improper payment from an estate would be eligible for award if it has only one heir. This is both illogical and unfair, and allows the Government to profit from its own breach of trust.

Although it may not be unreasonable to establish a minimum amount that may be awarded, the bill should be amended to specify that any estate that was charged $50 or more shall be eligible for award, without regard to the number of heirs who are to share that award.

Fourth, S. 1151 allows the Government to profit from its own breach of trust in yet another way. It makes no provision for the use of moneys that are not awarded because the heirs cannot be found or because the total claim is too small. We agree with the suggestions made by other witnesses that all un-

awarded amounts be paid to the tribes of the deceased Indians to be used for tribal purposes. We urge the Committee to include such an amendment in this bill.

Mr. Chairman, that concludes my remarks on S. 1151.

Senator ANDREWS. Mr. Fritz, do you have any comments on the discussion, the interaction, with the tribal witnesses on the bill on which you just testified? Essentially, they bear out what you and I talked about during your initial presentation.

Mr. FRITZ. I think that is the case. I think they just reiterate the need to have a simplified process, and we will see if we can come up with something by working in conjunction with your staff to see if we can ease the burden.

Senator ANDREWS. The staff will be cooperating with you, of course, and your people, in order to put together a bill that will protect the rights of the Indian people and also be, shall we say, nonbureaucratic as we can make it.

Mr. FRITZ. Yes, sir.

Senator ANDREWS This hearing is adjourned.

[Whereupon, at 11:10 a.m., the hearing was adjourned.]

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